

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	Civil Action #: 07 CIV.6190 (PAC)
PATRICIA CREEGAN-LYNCH,	:	
	:	
Plaintiff,	:	
	:	<b><u>VERIFIED ANSWER</u></b>
-against-	:	
TOWN SPORTS INTERNATIONAL, LLC,	:	
	:	
Defendants.	:	
-----	x	

Defendant, TOWN SPORTS INTERNATIONAL, LLC., by its attorneys, WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP answers the plaintiff's Verified Complaint, upon information and belief as follows:

1. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph designated "1" of the Verified Complaint.
2. Denies each and every allegation set forth in paragraphs designated "3", "4", "5", "6" and "9" of the Verified Complaint.
3. Denies each and every allegation set forth in paragraphs designated "7", "8" and "10" of the Verified Complaint and respectfully refers all questions of law or fact to this Honorable Court at the trial of this action.

**AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE  
DEFENSE TO EACH AND EVERY CAUSE OR CAUSES OF ACTION IN THE  
VERIFIED COMPLAINT OF THE PLAINTIFF, THE DEFENDANT ALLEGES:**

4. The answering defendant alleges, upon information and belief, that wherever injuries were sustained by plaintiff, or whatever damages were sustained by plaintiff at the time and place alleged in the Verified Complaint were the result of the

culpable conduct and/or comparative negligence of plaintiff and the answering defendant pleads such culpable conduct and/or comparative negligence in diminution of damages. If a verdict or judgment is awarded to plaintiff, then and in that event, the damages shall be reduced in the proportion which the culpable conduct and/or comparative negligence attributable to the plaintiff.

**AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OR CAUSES OF ACTION IN THE VERIFIED COMPLAINT OF THE PLAINTIFF, THE DEFENDANT ALLEGES:**

5. If plaintiff was caused to sustain damages at the time and place set forth in the plaintiff's Verified Complaint, it was due to the culpable conduct of third-person(s) over whom the answering defendant exercised no control, supervision or legal responsibility.

**AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OR CAUSES OF ACTION IN THE VERIFIED COMPLAINT OF THE PLAINTIFF, THE DEFENDANT ALLEGES:**

6. Upon information and belief, any past costs or expenses incurred or to be incurred by the plaintiff for medical care, loss of earnings or other economic loss, have been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

**AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OR CAUSES OF ACTION IN THE VERIFIED COMPLAINT OF THE PLAINTIFF, THE DEFENDANT ALLEGES:**

7. That if it should be found after trial that the answering defendant is liable to the plaintiff in the amount of fifty percent (50%) or less of the total liability assigned to

all persons liable, the liability of the answering defendant to the plaintiff for non-economic loss shall not exceed the answering defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss in accordance with Article 16 of the CPLR.

**AS AND FOR A FIFTH, SEPARATE AND COMPLETE AFFIRMATIVE  
DEFENSE TO EACH AND EVERY CAUSE OR CAUSES OF ACTION IN THE  
VERIFIED COMPLAINT OF THE PLAINTIFF, THE DEFENDANT ALLEGES:**

8. Plaintiff's alleged damages, if any, were caused in whole or in part by pre-existing medical and/or health conditions.

**AS AND FOR A SIXTH, SEPARATE AND COMPLETE AFFIRMATIVE  
DEFENSE TO EACH AND EVERY CAUSE OR CAUSES OF ACTION IN THE  
VERIFIED COMPLAINT OF THE PLAINTIFF, THE DEFENDANT ALLEGES:**

9. The answering defendant lacked notice of the alleged dangerous conditions/hazards and/or had insufficient time or opportunity to cure the alleged conditions/hazards.

**AS AND FOR A SEVENTH, SEPARATE AND COMPLETE AFFIRMATIVE  
DEFENSE TO EACH AND EVERY CAUSE OR CAUSES OF ACTION IN THE  
VERIFIED COMPLAINT OF THE PLAINTIFF, THE DEFENDANT ALLEGES:**

10. That the answering defendant secured workers' compensation benefits for its employees, and that the injuries sustained by the plaintiff arose out of and occurred in the regular course and scope of plaintiff's employment with the answering defendant, and that pursuant to WCL §§ 10 and 11 the plaintiff's remedies lie exclusively under the workers' compensation laws.

WHEREFORE, the defendant demands judgment dismissing the Verified Complaint of the plaintiff herein together with the costs and disbursements of this action.

Dated: White Plains, New York  
July 16, 2007

Yours, etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN  
& DICKER LLP

Attorneys for Defendant

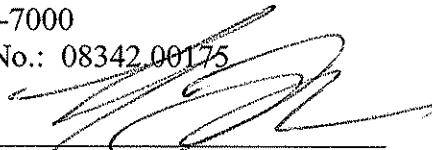
3 Gannett Drive

White Plains, New York 10604

(914) 323-7000

Our File No.: 08342.00175

By:

  
\_\_\_\_\_  
Rory L. Lubin (RL 1340)

TO: GREGORY BAGEN, ESQ.  
Attorney for Plaintiff  
317 Clock Tower Commons Drive  
P.O. Box 380  
Brewster, New York 10509  
Tel: (845) 279-7000  
Fax: (845) 279-4900

ATTORNEY'S VERIFICATION

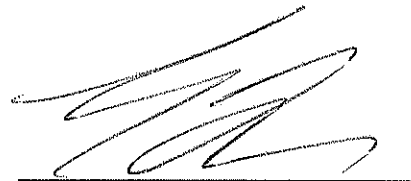
RORY L. LUBIN, an attorney duly admitted to practice in the State of New York, states the following under the penalties of perjury:

That I am a member of the firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP the attorneys for the defendant, TOWN SPORTS INTERNATIONAL, LLC, in this action, that I have read the foregoing VERIFIED ANSWER and know the contents thereof, that the same is true to my knowledge except as to the matters therein stated to be alleged upon information and belief, and as to these matters I believe them to be true.

I further state that the reason this verification is made by me and not by the defendant is that the defendant, TOWN SPORTS INTERNATIONAL, LLC, does not reside within the County of Westchester where your affirmant maintains his principal law office.

All matters herein stated upon information and belief are based upon my legal file, correspondence and conversation with the defendant.

Dated: White Plains, New York  
July 16, 2007

  
\_\_\_\_\_  
RORY L. LUBIN

**AFFIDAVIT OF SERVICE**


STATE OF NEW YORK                    )  
  ) ss:  
COUNTY OF WESTCHESTER        )

LAURIE PAYER, being duly sworn, deposes and says:

That I am not a party to this action, am over eighteen years of age and reside in the State of New York.

That on the 16<sup>th</sup> day of July, 2007 deponent served the within **VERIFIED ANSWER** by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, addressed to each of the following persons at the last known address set forth after each name, as follows:

TO: GREGORY BAGEN, ESQ.  
Attorney for Plaintiff  
317 Clock Tower Commons Drive  
P.O. Box 380  
Brewster, New York 10509  
Tel: (845) 279-7000  
Fax: (845) 279-4900

  
LAURIE PAYER

Sworn to before me this  
16<sup>th</sup> day of July, 2007

  
Notary Public

RORY L. LUBIN  
Notary Public, State of New York  
No. 02LU5057942  
Qualified in Westchester County  
Commission Expires April 1, 2010